

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

U.S. DISTRICT COURT
PORTLAND, MAINE
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ALLIANCE OF AUTOMOBILE MANUFACTURERS,)

BY _____
DEPUTY CLERK

Plaintiff,)

v.)

No.)

MARTHA KIRKPATRICK, in her official capacity as)
Commissioner of the Maine Department of Environmental)
Protection,)

INJUNCTIVE RELIEF
SOUGHT

Defendant.)

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTION

The Alliance of Automobile Manufacturers complains against Martha Kirkpatrick, in her official capacity as Commissioner of the Maine Department of Environmental Protection, as follows:

Introduction

1. This is an action to declare unconstitutional and to enjoin enforcement of certain recent amendments to the Maine Revised Statutes. As set forth in more detail below, those amendments seek to address improper (and already unlawful) disposal of mercury by companies in Maine by imposing new restrictions on how a specific subset of mercury-containing waste is handled, and by transferring the burdens associated with handling that specific subset of waste from Maine companies to citizens of other States. These amendments were motivated by the express intent of relieving Maine companies from as much of the burden of complying with the new waste-handling strictures as possible, and imposing those burdens onto citizens of other States. A copy of the challenged amendments, contained in LD 1921, is attached to this Complaint as Exhibit A.

2. Specifically, those amendments shift the costs of handling mercury -- containing electrical switches in scrapped motor vehicles from the Maine companies who dispose of them and recycle them to the out-of-state citizens who had lawfully manufactured them. As such, they impose additional, and unnecessary, costs on interstate commerce; they treat similarly situated persons unequally; and they impose some restrictions that are simply irrational. Among other things, LD 1921 requires manufacturers of motor vehicles that contain mercury switches to (a) establish "consolidation facilities geographically located to serve all areas of the State" by January 1, 2003, to receive mercury switches from any source; (b) pay a bounty of at least \$1 per switch, regardless of the source of the switch, to anyone who brings the switch to a "consolidation facility;" and (c) provide "information, training and other technical assistance" to state regulators and to Maine residents who actually remove mercury-containing parts from vehicles.

3. At the same time, LD 1921 expressly *prohibits* those out-of-state vehicle manufacturers from (a) using "a facility that is licensed in the State as a new or used automobile dealership" as one of the required "consolidation facilities;" or (b) requiring the Maine citizens who seek the statutory \$1 per switch bounty "to segregate switches separately according to each manufacturer of motor vehicles from which switches are removed."

4. No other state in America has attempted to impose such a sweeping transfer of waste-disposal responsibility onto citizens of other states. In short, LD 1921 effectively forces out-of-state companies to enter the recycling business against their will and, in effect, subsidizes the balance sheets of Maine recyclers and disposal companies, who are relieved of the burden of having to handle these waste substances.

5. The provisions of LD 1921 identified in paragraphs 2 and 3 violate the Commerce, Equal Protection, Due Process, and Freedom of Speech Clauses of the United States Constitution.

6. Plaintiff seeks a declaration under 28 U.S.C. §2201 that the challenged provisions are unconstitutional; injunctive relief preventing enforcement of the challenged provisions; attorneys' fees and costs pursuant to 42 U.S.C. §1988; and such other relief as the Court deems proper.

Jurisdiction and Venue

7. This Court has jurisdiction under 28 U.S.C. §§1331 and 1343.

8. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b) and Local Rule 3(b).

The Parties

9. The Alliance of Automobile Manufacturers is a trade association composed of 12 car and light truck manufacturers, which together account for more than 90 percent of U.S. vehicle sales. (The Alliance's members are BMW Group, DaimlerChrysler, Fiat, Ford Motor Company, General Motors, Isuzu, Mazda, Mitsubishi Motors, Nissan, Porsche, Toyota and Volkswagen). The Alliance brings this case on its own behalf, as well as on behalf of its members. The Alliance serves as a leading advocate for the automobile industry on a variety of public policy issues, including environmental issues, and has among its purposes the advancement of its members' interests in reasonable and constitutional environmental regulation. The Alliance has expended significant resources in representing the interests of its membership in ensuring that Maine's mercury legislation is constitutional and reasonable. Alliance members employ approximately 600,000 people at facilities in 35 States, but none has any significant operations or employees in the State of Maine, and none manufactures any motor vehicles or motor vehicle components in Maine. In other words, all of the Alliance's members' income

from the sale of motor vehicles and other goods and services in Maine is derived from interstate commerce.

10. Defendant Martha Kirkpatrick is the Commissioner of the Maine Department of Environmental Protection and, as such, is responsible for implementing and enforcing the provisions challenged in this case.

Background

11. Mercury is a naturally-occurring element that is neither created nor destroyed by human activity, and that has always been part of Earth's environment.

12. While it is a natural element, some kinds of human activity can release mercury that otherwise would not be free in the environment. The Maine Department of Environmental Protection has stated that the major sources of airborne mercury found today in Maine's environment are facilities that burn coal, oil, wood or natural gas as fuel; incinerators that burn mercury-containing waste; and industrial production processes that utilize mercury. Once airborne, mercury from these sources can fall to the ground with rain and snow.

13. Secondary sources of mercury in Maine's environment are products that contain mercury, including thermometers, fluorescent lamps, button batteries, thermostats, manometers, relays, and dental supplies.

14. Electrical switches that contain mercury constitute a fraction of this secondary universe of mercury sources. For a number of years, many cars and light trucks, as well as many aircraft, boats, household appliances, furnaces and homes and offices, used electrical switches that contained small amounts of mercury. While no motor vehicle manufacturer uses mercury-containing convenience switches in new vehicles any longer, there are many vehicles still on the road, as well as an untold number of aircraft, boats, appliances, furnaces and buildings, that have one or more mercury-containing switches.

15. Because the mercury used in electrical switches in motor vehicles was encased in metal, designed to last for the life of the vehicle, and subject to rigorous durability tests, those switches do not cause or threaten any harm to the environment during the useful life of the vehicle.

16. When the appliance, furnace, vehicle, aircraft or boat that contains the switch reaches the end of its life and is dismantled or scrapped, or when the building that houses the switch is remodeled, the mercury from it can nevertheless be released into the environment as a result of carelessness (or deliberate misconduct). Existing laws at the federal and state level already regulate the handling and disposal of those mercury-containing switches. But, if the dismantler or scrap yard does not handle the mercury-containing switch in accordance with those existing laws, the mercury can be spilled or burned in an incinerator and can re-enter the environment.

Maine's Regulation of Mercury

17. Maine has chosen to address the improper disposal of mercury within the state by focusing on the secondary category of mercury-containing products with several legislative and regulatory programs. Most of these programs, which include a voluntary program to recycle mercury thermostats; replacement at State expense of mercury manometers used by farmers; labeling of many mercury-containing products; and a ban on the disposal of "mercury-added" products and a requirement that they be recycled, properly focus on the individual users of mercury products and on the people and businesses that dispose or recycle them.

18. In sharp contrast, Maine has chosen to regulate mercury switches in motor vehicles in a different and more onerous manner than it regulates mercury in other products. In regulating mercury switches from motor vehicles, Maine has targeted out-of-state automobile manufacturers for uniquely disfavored treatment:

- a. Maine does not require any industry, except the motor vehicle industry, to establish "consolidation centers" to collect mercury switches or other mercury containing devices.
- b. Maine does not require any industry, except the motor vehicle industry, to pay a "bounty" for dismantled mercury switches or other mercury containing devices.
- c. Maine does not require any industry, other than the motor vehicle industry, to provide training and other assistance to those who remove mercury-containing switches or other mercury-containing devices.

19. The mercury contained in electrical switches in motor vehicles does not pose any hazard that is unique, special, or greater than the hazard posed by mercury-containing components in aircraft, boats, household appliances, furnaces or other uses.

20. Maine enacted the prohibition against establishing "consolidation facilities" at new or used car dealerships for mercury switches, despite the fact that those dealerships use, handle and dispose of a variety of other substances that could be released into the environment if not handled properly.

21. There is no reason related to any environmental risk for the prohibition against requiring people who remove mercury switches to reveal the identity of the manufacturer of the vehicle from which the switch was removed.

22. More broadly, all of the challenged provisions impose burdens on interstate commerce that are both unnecessary and disproportionate to any hoped-for local benefit. Any concerns about environmental damage caused by improper disposal of mercury could be addressed through adequate enforcement of the existing ban on disposal of mercury-containing

products. Rather than simply enforce the law against its own businesses, though, Maine has required out-of-state citizens to enter the recycling business against their will; required those out-of-state citizens to pay for switches that they did not manufacture, and which did not necessarily even come from motor vehicles, and prohibited them from using their existing network of dealerships to assist.

Injury to Plaintiff

23. The Alliance's members have been and will continue to be injured by the challenged legislation, in that they will be forced to incur substantial expenses in an effort to comply. Those expenses include, at a minimum, the following:

- a. the cost of establishing individual contractual relationships between each manufacturer and each consolidation facility;
- b. the cost of administering each of the contractual relationships, including the cost of monitoring the consolidation facilities and auditing their claims for reimbursement;
- c. the cost of providing the required information, training and technical assistance;
- d. the cost of managing mercury at the consolidation facilities;
- e. the cost of packaging the shipping the mercury to an out-of-state recycling facility;
- f. the cost of recycling the mercury; and
- g. the cost of the "at least" \$1 bounty per switch and the cost of administering a bounty program.

All of these expenses will be new and additional burdens on interstate commerce.

24. The Alliance itself has also been injured by the challenged legislation, in that the Alliance has been impaired in its ability to represent, protect, and advance the interests of its members, including their interests in reasonable and constitutional environmental regulation. The Alliance has also expended substantial money and staff time to assess and address the practical effects of the challenged legislation on its members, and to assist those members in their efforts to respond to the legislation.

25. The enactment of the challenged provisions of LD 1921 deprives both the Alliance and its members of rights secured by the Constitution of the United States, in violation of 42 U.S.C. §1983.

Count I

The Bounty Requirement Violates the Commerce Clause

26. Plaintiff incorporates by reference paragraphs 1-25 as if set forth in full.

27. The bounty requirement violates the Commerce Clause of the U.S. Constitution, because it discriminates against interstate commerce in motor vehicles in practical effect.

28. The bounty requirement violates the Commerce Clause of the U.S. Constitution because the burdens it imposes on interstate commerce in motor vehicles substantially outweigh whatever legitimate local benefits it may have.

Count II

The Bounty Requirement Violates the Equal Protection Clause

29. Plaintiff incorporates by reference paragraphs 1-28 as if set forth in full.

30. The bounty requirement violates the Equal Protection Clause of the U.S. Constitution, because there is no rational basis for imposing the requirement on motor vehicle manufacturers and not on the manufacturers of other products that contain mercury switches.

Count III

The Consolidation Facility Requirement Violates the Commerce Clause

31. Plaintiff incorporates by reference paragraphs 1-30 as if set forth in full.

32. The consolidation facility requirement violates the Commerce Clause of the U.S. Constitution, because it discriminates against interstate commerce in motor vehicles in practical effect.

33. The consolidation facility requirement violates the Commerce Clause of the U.S. Constitution, because the burden it imposes on interstate commerce in motor vehicles substantially outweighs whatever legitimate local benefit it may have.

Count IV

The Consolidation Facility Requirement Violates the Equal Protection Clause

34. Plaintiff incorporates paragraphs 1-33 as if set forth in full.

35. The consolidation facility requirement violates the Equal Protection Clause of the U.S. Constitution, because there is no rational basis for imposing the requirement on motor vehicle manufacturers and not on the manufacturers of other products that contain mercury switches.

Count V

The Information, Training And Technical Assistance Requirement Violates the Freedom of Speech Clause

36. Plaintiff incorporates by reference paragraphs 1-35 as if set forth in full.

37. The requirement to provide information, training and other technical assistance violates the Freedom of Speech Clause of the First Amendment, because it compels speech.

Count VI**The Prohibition On the Use of
Dealerships Violates the Due Process Clause**

38. Plaintiff incorporates by reference paragraphs 1-37 as if set forth in full.

39. The prohibition on the use of dealerships as consolidation facilities violates the Due Process Clause of the U.S. Constitution, because it is irrational and does not support any legitimate legislative purpose.

Count VII**The Prohibition On the Use of
Dealerships Violates the Equal Protection Clause**

40. Plaintiff incorporates by reference paragraphs 1-39 as if set forth in full.

41. The prohibition on the use of dealerships as consolidation facilities violates the Equal Protection Clause of the U.S. Constitution, because there is no rational basis for imposing the prohibition against collecting mercury but not other potentially hazardous materials at dealerships.

Count VIII**The Prohibition On Requiring
Segregation of Switches Violates the Due Process Clause**

42. Plaintiff incorporates by reference paragraphs 1-41 as if set forth in full.

43. The prohibition on requiring persons seeking the bounty on mercury switches to segregate them by manufacturer violates the Due Process Clause of the U.S. Constitution, because it is irrational and does not support any legitimate legislative purpose.

Count IX**The Prohibition On Requiring
Segregation of Switches Violates the Equal Protection Clause**

44. Plaintiff incorporates by reference paragraphs 1-43 as if set forth in full.

45. The prohibition on requiring persons seeking the bounty on mercury switches to segregate them by manufacturer violates the Equal Protection Clause of the U.S. Constitution, because it virtually guarantees that manufacturers will not bear the cost of collecting mercury switches from motor vehicles in proportion to the number of mercury switches in the vehicles they sold.

Relief Requested

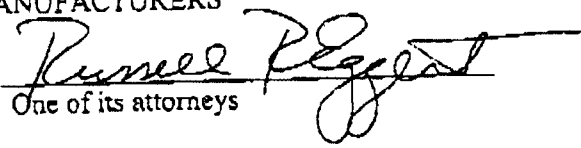
WHEREFORE, for the foregoing reasons, Plaintiff requests that the Court:

- a. Declare that the challenged provisions violate the United States Constitution;
- b. Enjoin Defendant from implementing or enforcing the challenged provisions;
- c. Award Plaintiff its attorneys' fees and costs of this action pursuant to 42 U.S.C. §1988; and
- d. Award such other and different relief as the Court deems appropriate.

Respectfully submitted,

ALLIANCE OF AUTOMOBILE
MANUFACTURERS

By


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